

July 23, 2010

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Department of Consumer and Regulatory Affairs
1100 4th Street SW, Room 5164
Washington, D.C. 20024



Re: Proposed Regulations to Amend Chapter 5 of Title 24 of the District of Columbia Municipal Regulations (Vendors)

The D.C. Farmers' Market Collaborative¹ appreciates this opportunity to submit comments regarding the proposed regulations to amend the vending regulations set forth in Chapter 5 of Title 24 of the District of Columbia Municipal Regulations. *See* D.C. Register Vol. 57, No. 26 (June 25, 2010).

The Collaborative was convened in late 2006 by D.C. Hunger Solutions, an initiative of the Food Research and Action Center, which is dedicated to ending hunger and improving the nutrition, health, and well-being of low-income people in the District of Columbia. We bring together representatives from farmers' markets, anti-hunger organizations, and nutrition specialists and seek to promote the benefits of farmers' markets and implement strategies to increase market capacity to serve low-income communities. The Collaborative includes, among others: FRESHFARM Markets, Markets & More, the Mount Pleasant Farmers' Market, D.C. Greens, the Ward 8 Farmers' Market, the Summit Health Institute for Research and Education, and the University of the District of Columbia Farmers' Market.

The Collaborative supports the District's efforts to amend the vending regulations, and specifically to bring greater clarity to the relevant licensure and permitting processes. We offer these comments on, and suggested changes to, the proposed regulations in the following three areas:

- The proposed regulations should further clarify which provisions would apply to the activities of farmers' markets and other Class C public markets, which would not be issued Vending Site Permits.
- The proposed regulations should more broadly define -- and thereby exempt from license/permit requirements -- "persons selling" at farmers' markets and other Class C public markets than the definitions contained respectively in sections 502.3(b) and 508.2(a). Otherwise, markets and producers will be unnecessarily limited in the types of products they can sell.
- The proposed regulations should make clear that an individual person or entity managing a public market needs only one Class C License, and with that license can operate at multiple locations (provided that the operator holds the necessary permits to operate at each location).

I. CLARIFICATION ON THE PROVISIONS APPLICABLE TO FARMERS' MARKETS AND OTHER CLASS C PUBLIC MARKETS

Farmers' markets offer important benefits to the District by, among other things, offering healthy and fresh products to residents and supporting local producers. Farmers' markets in D.C. also give back to the city, donating fresh fruit and vegetables to local non-profits serving low-income families. Farmers markets also provide nutritious food to low-income residents through the WIC, Senior Farmers Market Nutrition Program and Food Stamp (SNAP) redemption. Since 2009, several markets are also providing free matching Market Dollars for these low income shoppers. Several markets operate in so-called "food deserts," working to bring nutritious food

¹ In this letter, the D.C. Farmers' Market Collaborative is referred to as "We" or the "Collaborative."

to areas underserved by healthy food retail. In short, farmers' markets stand apart from traditional vendors, and, therefore, the District should regulate farmers' markets under different requirements and standards.

Therefore, the Collaborative supports that the proposed regulations would classify a farmers' market as a type of "public market" and require managers (either individuals or organizations) of public markets to obtain a Class C Vending Business License from the Department of Consumer and Regulatory Affairs ("DCRA"), and a Public Space Permit from the Department of Transportation ("DDOT") or a Certificate of Occupancy for use of private space from DCRA. *See* sections 599.1 and 531.2-.3. A Class C public market manager would not be required to obtain a Vending Site Permit from DDOT. *See* section 508.1.

We interpret these provisions to mean that, as a general matter:

- Class C public markets are subject to the proposed regulations addressing licensure requirements and other generally applicable requirements -- *e.g.*, Section 518 (Propane and Open Flame Permit); Subchapter G (Soliciting),² and Section 564 (Penalties).
- Class C public markets are **not** subject to the proposed regulations addressing requirements and standards applicable Vending Site Permits -- *e.g.*, Subchapter A (Vending Licenses, Permits and Authorizations), Sections 508-512 (Vending Site Permits); Subchapter C (Vending Locations), Parts 1-4; and Subchapter D (Design Standards, Operational Standards, and Inspections).

Additionally, as reflected in section 508.1, the operations of farmers' markets and other Class C public markets on public spaces would continue to be regulated under the Public Space Permit process administered by DDOT. Again, the Collaborative supports this proposed framework, and we intend to continue cooperating with DDOT to ensure the continued existence of current markets.

That said, while the Collaborative believes that the above-stated interpretation is the most reasonable reading of the proposed regulations, we have significant concerns that under a strict reading of the proposed regulations, there is a lack of clarity regarding which provisions are applicable to Class C public markets. Indeed, we expressed such concerns in a November 2008 submission of comments on the previous iteration of the proposed regulations, which was very similar to the current version. **(Attachment A)**. In those comments, we recommended adding additional language in several sections which we believe would have helped remove any ambiguity about which provisions are applicable to holders of Class C licenses.

We continue to believe that certain minor changes to the text could provide greater clarity on these issues. Therefore, we respectfully submit the following proposed changes (specific proposed language is written in italics):

- 502.1 (b) "Vending Site Permit assigned pursuant to § 508 et seq., unless the vendor is a Mobile Roadway Vendor *or has been issued a Class C Vending Business License to manage a public market*";
- 502.1 (c) "Health Inspection Certificate issued by the DOH Director, if the person vends food *under a Class A Vending Business License*";
- 504.2 (d) "A description of the vending vehicle, vending cart, or vending stand to be used (*not applicable to Class C Public Markets*)";
- 504.2 (e) "An indication of the Vending Locations the applicant wishes to occupy, in their order of preference (*not applicable to Class C Public Markets*)";

² Please note that the "Soliciting" provisions are referred to as "Subchapter F" on page 4 of the proposed regulations.

- 509.1: “*Except for Class C Public Markets*, a person shall submit an application for a Vending Site Permit...”;
- 513.1: “No person shall vend food *with a Class A Vending Business License* in the District unless a valid Health Inspection Certificate has been issued by the Department of Health for the vending vehicle, cart, or stand from which the food is vended”;
- 520.1 (applicable to Subchapter C, Parts 1-4): “*Subchapter C: Vending Locations, Parts 1-4, does not apply to Class C Public Markets*”;
- 532.1 (applicable to Subchapter D): “*Subchapter D: Design Standards, Operational Standards, and Inspections, Parts 1-4, does not apply to Class C Public Markets, which follow the applicable rules and regulations associated with Public Space Permits (issued by DDOT) or associated with private space.*”

II. THE LICENSE/PERMIT EXEMPTIONS FOR “PERSONS SELLING” AT FARMERS’ MARKETS AND OTHER CLASS C PUBLIC MARKETS ARE OVERLY NARROW

The Collaborative has significant concerns regarding the overly narrow language that provides exemptions from licensing and permitting requirements for “persons selling” at farmers’ markets or other Class C public markets. To review, under the proposed regulations, a manager of a farmers’ market or other Class C public market is required to obtain a Class C license from DCRA and a Public Space Permit from DDOT or Certificate of Occupancy for use of private space from DCRA. Under section 502.3(b), a Vending Business License is not required for “[p]ersons selling agricultural goods or farm products of their own raising at a public market licensed under § 531” In addition, under section 508.2(a), a Vending Site Permit is not required for “[p]ersons selling agricultural goods or farm products of their own raising at a public market licensed and, if required, permitted [sic] under § 531”

The Collaborative interprets these provisions to mean that persons selling at farmers’ markets and other Class C markets are not required, under appropriate circumstances, to obtain a license or permit to operate at a Class C public market, as long as the market manager has appropriate licenses, permits, etc. While the Collaborative strongly supports these exemptions, we are concerned that the language used in the proposed regulations unnecessarily limits the types of persons selling at farmers’ markets who would be eligible for these exemptions.

For these reasons, the Collaborative respectfully requests that the language used in sections 502.3(b) and 508.2(a) be revised to read (added language in italics): “Persons selling agricultural goods, farm products, or other products of their own raising *or production*, or that are locally raised or produced, at a public market licensed or permitted by the Mayor.” We believe that the purpose and spirit of this exemption would be maintained with this revised language. Further, we believe that Sections 531.4 and 531.5 provide adequate assurance that any products being sold at a public market will be produced and handled appropriately and safely, according to applicable laws and regulations. According to those sections, all persons operating at a Class C Public Market “are subject to applicable license and health laws and regulations.”

III. A PERSON/ENTITY THAT MANAGES MULTIPLE FARMERS’ MARKETS IN THE DISTRICT SHOULD BE REQUIRED TO OBTAIN ONLY ONE CLASS C LICENSE

The proposed regulations state that a “Class C Vending Business License shall authorize a person to manage farmers markets and other open markets on public or private space for the sale of agricultural goods and other farm products, or other food, merchandise, or services.” Section 503.1(c). The Collaborative interprets this provision to mean:

- that a market manager (individual or entity) is required to obtain only one Class C Vending Business License;

- that with a single license, a manager (individual or entity) may operate multiple markets at multiple locations, provided the market management holds the necessary permits for each location; and
- that the Class C Vending License serves as its license to do business in the District, i.e., that the entity does not also need a Basic Business License. (We understand that a non-profit organization also may need a Charitable Solicitation License.)

The Collaborative appreciates the opportunity to provide comments and recommendations, and respectfully requests that the District consider the above proposals in the development of the final vending regulations.

Thank you for your attention to this matter. Please feel free to contact D.C. Hunger Solutions at 202-986-2200 (ext. 3041) if you have any questions or would like to discuss anything.

Respectfully submitted,

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cc: D.C. Farmers' Market Collaborative